

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUBEN FILIUT,

Plaintiff,

v.

Case Number: 05-71514

APPLEGATE, ET AL.,

HON. PATRICK J. DUGGAN

Defendants.

**OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR RELIEF
FROM JUDGMENT**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on May 6, 2008.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff Ruben Filiut, an inmate in the custody of the Michigan Department of Corrections, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. §1983. On August 9, 2006, this Court entered a judgment in favor of Defendants and against Plaintiff after granting Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). On August 28, 2006, Plaintiff filed a notice of appeal in the Sixth Circuit. The Sixth Circuit affirmed this Court's judgment on July 23, 2007. Almost seven months later, on February 28, 2008, Plaintiff filed a motion for leave to file an amended complaint. In an opinion and order issued on March 18, 2007, this Court denied Plaintiff's request. Plaintiff now has filed a motion for relief from judgment pursuant to

Federal Rule of Civil Procedure 60(b)(1).

Rule 60(b) provides:

On a motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A motion filed pursuant to this rule must be made within a reasonable time and, for reasons (1), (2), and (3), no more than a year after the entry of the judgment or order. Therefore, to the extent Plaintiff seeks relief from the Court's August 9, 2006 judgment, the time for filing a Rule 60(b) motion has expired. To the extent Plaintiff seeks relief from the Court's more recent order denying his request for leave to amend the complaint, he fails to establish that any of the reasons set forth in the rule justify relief.

Accordingly,

IT IS ORDERED, that Plaintiff's motion for relief from judgment is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
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#196495
St. Louis Correctional Facility
8585 N. Croswell Road
St. Louis, MI 48880

Christine M. Campbell, A.A.G.